

**A Ambikamurali a/p PV Govindan v Kannan Deban a/l PV
Govindan and another appeal**

**B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL
NOS N-02(NCVC)(W)-2190-10 OF 2018 AND
N-02(NCVC)(W)-625-04 OF 2019
BADHARIAH SAHAMID, LAU BEE LAN AND AZIZAH NAWAWI JICA
4 DECEMBER 2020**

C *Land Law — Land settlement area — Ownership of land settlement area
— High Court ruled that respondent was not holding Group Settlement Area land
as trustee for respondent and for other beneficiaries — Whether High Court failed
D to take into consideration uniqueness of Land (Group Settlement Areas) (‘Act 530’)
when deciding that appellant was not a trustee for himself and other beneficiaries
— Whether High Court failed to consider Hansard to The Group Settlement Areas
Bill 1960 and The Group Settlement Areas (Amendment) Bill 2002 in interpreting
ss 14, 15 and 16 of Act 530*

E *Civil Procedure — Appeal — Appellate interference — Misdirection by trial
court — Whether insufficient judicial appreciation of evidence — Whether the
High Court erred when there was no proper judicial appreciation of the evidence of
SD1 and appellant’s witnesses*

F *Evidence — Adverse inference — Failure to call material witness — Failure to
call material witness to establish respondent’s case — Whether there was a failure
to invoke s 114(g) of Evidence Act 1950 against respondent for failing to call a
G material witness*

H There are two appeals, N-02(NCvC)(W)-2190-10 of 2018 (‘Appeal 2190’) and N-02(NCvC)(W)-625-04 of 2019 (‘Appeal 6235’) which were heard together basically because the respective lands in issue in both appeals were lands which fall within the Land (Group Settlement Areas) Act 1960 (Act 530). The common issue in both appeal concerned the application of s 16 of Act 530. PV Govindran was the original settlor of the lands at Felda Peringkat 3, Sendayan, Negeri Sembilan Darul Khusus held under PM 1503, Lot 6469 Mukim Labu and PM 1504, Lot 6768 Mukim Labu (‘GSA land’). PV
I Govindan died intestate on 7 July 1987 and in 1996, there was a meeting before the land administrator attended by the deceased’s children and their mother, the deceased’s wife with respect to the contribution of the deceased’s estate comprising the GSA land. It was the appellant’s case that the GSA land was registered in the name of the respondent as a holder, holding the said land in

trust for the benefit of himself, his mother and his siblings as beneficiaries of the estate of the deceased. The respondent was precluded from claiming that the GSA land belonged only to the respondent to the exclusion of all other beneficiaries. The respondent contended that the GSA land was registered in the respondent's name as the proprietor and that the whole share in the said land had been given to the respondent by the respondent's mother and consented to by the respondent's siblings. The respondent contended that he has an indefeasible title. The High Court ruled that the respondent was not holding the GSA land as a trustee for the respondent and for other beneficiaries. The appellant contended that the learned judge failed to take into consideration the uniqueness of Act 530 and decided that the appellant being the registered proprietor was not a trustee for himself and other beneficiaries. The appellant further contended that the High Court failed to consider the Hansard to The Group Settlement Areas Bill 1960 and The Group Settlement Areas (Amendment) Bill 2002 in interpreting ss 14–16. The appellant further argue that the High Court had erred when it was ruled that the case of *Gunala a/l Ramachandran v Maliga a/p Ramachandran* Originating Summons No 25–12 of 1999 (*Gunala's case*) was not applicable. The appellant further submitted that the High Court had erred when there was no proper judicial appreciation of the evidence of SD1 and the appellant's witnesses and there was a failure to invoke s 114(g) of the Evidence Act 1950 against the respondent for failing to call a material witness.

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Held, allowing appeal and setting aside High Court's decision:

- (1) The court was of the considered view that the entails an examination of the applicable law which governed the parties with respect to the distribution of the GSA land at the meeting before the collector of land revenue. It was not disputed that the GSA land was a rural holding, Part III of The Group Settlement Areas Bill 1960 which was on 'Rural Holdings' was relevant (see para 14).
- (2) From a reading of the Hansard, it was clear that the legislative intent of ss 14–16 was there shall be one single proprietor for a holding and the provisions prohibited the sub-letting, the subdivision or fragmentation of the holding in any circumstances. The word proprietor had to be taken to mean holder in light of the amendment to cl 16. It was significant that s 16 prohibited upon the death of a holder, the distribution of a holding among the beneficiaries. It was incumbent on the beneficiaries to agree that their interests in the land be assigned to a single holder, failing which the Collector of Land Revenue had the right to close the holding and disposed the proceed. Notwithstanding that the title was issued to the respondent, it did not mean that the respondent was a registered proprietor of the GSA land under s 340 of the National Land Code. The fact of the registration of the GSA land in the respondent's name was only to fulfil the requirement of the law and the GSA land was being held in

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- A trust for the respondent's mother and siblings which would become apparent when the issue of lack of judicial appreciation of material evidence was addressed (see paras 18–19 & 22).
- B (3) The issue confronting the High Court in *Gunala's* case was similar and the court could not agree with the decision of the trial judge which was supportive of the respondent's submission. In *Gunala's* case, the learned High Court judge reversed the order of the land administrator because:
- C (a) the authenticity of the 'surat persetujuan' purportedly signed by the second applicant was vitiated by the unchallenged evidence that the second applicant who suffered mental disability and was unable to manage himself and it was unknown to the land administrator in determining the admissibility of the said 'surat persetujuan'; and (b) the 'surat persetujuan' signed by the rest of the beneficiaries was vitiated based on the evidence of the first applicant which revealed that the rest of the beneficiaries signed the 'surat persetujuan' without understanding the purport of signing the same. There was no unequivocal consent that the GSA land was given wholly by the respondent's mother to the respondent and consented to by his siblings, including the appellant. The trial judge had erred in distinguishing *Gunala's* case (see paras 28 & 35).
- D (4) The defendant relied on SD1's evidence to prove that his mother and siblings had relinquished their rights and interests in the lands to him and that he was the registered proprietor of the lands. Based on the evidence of SD1, it was clear that the JC failed to consider the legislative intent of the Act. Bereft of SD1's evidence to support his case, the defendant had not discharged his burden of proving his defence. The JC also failed to judicially appreciate the evidence of the witnesses against the probabilities of the case and hence, erred in His Lordship's findings. The defendant was unable to show that he was the registered proprietor of the lands (see paras 32–33 & 37–39).
- E (5) The trial judge failed to invoke s 114(g) of the Evidence Act 1950 against the respondent. The respondent refused to call his mother who was an important and material witness given that it was the respondent's defence. The evidential burden was upon the respondent to prove the defence. Failure of the respondent to call his mother to testify warranted the court to draw an adverse inference under s 114(g) against the respondent, in that if the respondent's mother was called, the evidence would be unfavourable to the respondent (see para 40).

I [Bahasa Malaysia summary]

Ini merupakan dua rayuan, N-02(NCvC)(W)-2190–10 Tahun 2018 ('Rayuan 2190') and N-02(NCvC)(W)-625–04 Tahun 2019 ('Rayuan 6235') yang didengar bersama kerana tanah yang menjadi perihal dalam kedua-dua rayuan jatuh dibawah Land (Group Settlement Area) Act 1960 (Akta 530). Isu yang

sama dalam kedua-dua rayuan berkaitan dengan penggunaan s 16 Akta 540. PV Govindran merupakan penetap asal tanah di Felda Peringkat 3, Sendayan, Negeri Sembilan Darul Khusus yang dipegang dibawah PM 1503, Lot 6469 Mukim Labu and PM 1504, Lot 6768 Mukim Labu ('tanah GSA'). PV Gonvindan mati tak berwasiat pada 7 Julai 1987 dan pada tahun 1996, satu mesyuarat telah diadakan dihadapan pentadbir tanah yang dihadiri oleh anak si mati, ibu mereka dan responden sebagai pemegang, memegang tanah tersebut secara amanah untuk kepentingan dirinya sendiri, ibunya, dan adik beradiknya sebagai benefisiari estet si mati. Responden dikecualikan daripada menuntut bahawa tanah GSA hanya dimiliki oleh responden kecuali benefisiari lain. Responden menyatakan bahawa tanah GSA didaftarkan diatas nama responden sebagai tuan punya dan bahawa bahagian penuh dalam tanah tersebut telah diberikan kepada responden oleh ibu responden dengan izin adik beradik responden. Responden menyatakan bahawa dia mempunyai hak milik tidak boleh dicabar. Mahkamah Tinggi memerintahkan bahawa responden tidak memegang tanah GSA sebagai pemegang amanah bagi pihak responden dan benefisiari lain. Perayu menyatakan bahawa hakim terpelajar gagal untuk mengambil kira keunikkan Akta 530 dan memutuskan bahawa perayu sebagai tuan punya berdaftar bukanlah seorang pemegang amanah untuk dirinya sendiri dan benefisiari lain. Perayu juga menyatakan bahawa Mahkamah Tinggi gagal untuk mengambil kira Hansard kepada Bil Group Settlement Areas 1960 dan Group Settlement Areas (Amendment) Bill 2002 semasa menafsir ss 14–16. Perayu telah menghujah bahawa kes Mahkamah Tinggi *Gunala a/l Ramachandran v Maliga a/p Ramachandran* Usul Pemula No 25–12 Tahun 1999 (kes Gunala's) tidak terpakai. Perayu juga menghujahkan bahawa Mahkamah Tinggi terkhilaf apabila tiada pengamatan kehakiman yang tepat dibuat terhadap keterangan SD1 terhadap saksi perayu dan wujud kegagalan untuk menggunakan s 114(g) Akta Keterangan terhadap responden atas kegagalan untuk memanggil saksi yang material.

Diputuskan, membenarkan rayuan dan mengetepikan keputusan Mahkamah Tinggi:

- (1) Mahkamah berpandangan bahawa wujud keperluan untuk meneliti undang-undang yang terpakai yang mentadbir pihak-pihak berkaitan dengan pembahagian tanah GSA di mesyuarat dihadapan pengutip cukai tanah. Ianya tidak dicabar bahawa tanah GSA merupakan pegangan luar bandar. Bahagian III Group Settlement Areas Bill 1960 yang berkaitan dengan pegangan luar bandar adalah relevan (lihat perenggan 14).
- (2) Daripada pembacaan Hansard, ianya adalah jelas bahawa niat perundangan ss 14, 15 dan 16 adalah akan wujud seorang tuan punya untuk satu pegangan dan peruntukan tersebut melarang sewaan lanjut, pembahagian, atau pecahan pegangan dalam apa keadaan. Perkataan tuan punya harus diterima sebagai bermaksud pemegang berkaitan dengan pindaan kepada klausa 16. Ianya adalah signifikan bahawa s 16

- A melarang atau kematian seorang pemegang, pembahagian satu pegangan diantara benefisiari. Ianya adalah di atas benefisiari untuk bersetuju bahawa kepentingan mereka dalam tanah tersebut diserahkan kepada seorang pemegang, yang mana sekiranya gagal, pengutip cukai tanah mempunyai hak untuk menutup pegangan tersebut dan melupuskan hasilnya.
- B Tanpa mengambil kira bahawa hak milik diisukan kepada responden, ianya tidak bermaksud bahawa responden merupakan tuan punya berdaftar tanah GSA di bawah s 340, Kanun Tanah Negara. Fakta bahawa pendaftaran tanah GSA atas nama responden hanya untuk memenuhi pendaftaran tanah GSA atas nama responden hanya untuk memenuhi keperluan undang-undang bahawa tanah GSA dipegang atas amanah untuk ibu dan adik beradik responden yang akan menjadi jelas apabila isu kekurangan pengamatan kehakiman atas keterangan yang material telah di jelaskan (lihat perenggan 18–19 & 22).
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- D (3) Isu yang dihadapi oleh Mahkamah Tinggi dalam kes *Gunala* adalah sama dan mahkamah tidak dapat bersetuju dengan keputusan hakim bicara yang menyokong hujahan responden. Dalam kes *Gunala*, hakim Mahkamah Tinggi mengetepikan perintah pentadbir tanah kerana: (a) kesahihan surat persetujuan yang dikatakan ditanda tangani oleh pemohon kedua dilucutkan oleh keterangan yang tidak dicabar bahawa pemohon kedua yang menghidap kecacatan mental dan tidak dapat mengurus dirinya sendiri dan ianya tidak diketahui oleh pentadbir tanah dalam menentukan kebolehterimaan surat persetujuan tersebut; dan (b) surat persetujuan yang ditandatangani oleh benefisiari lain dilucutkan berdasarkan keterangan pemohon pertama yang membongkar bahawa benefisiari lain menandatangani surat persetujuan tanpa pemahaman bahawa maksud sebenar ianya ditandatangani. Tiada izin tidak bersyarat bahawa tanah GSA diberikan sepenuhnya oleh ibu responden kepada responden dan diizinkan oleh adik beradiknya termasuklah perayu. Hakim bicara terkhilaf dalam mebezakan kes *Gunala* (lihat perenggan 28 & 35).
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- H (4) Defendan bergantung kepada keterangan SD1 untuk membuktikan bahawa ibunya dan adik beradiknya telah melepaskan hak dan kepentingan mereka terhadap tanah tersebut kepadanya dan dia merupakan pemilik berdaftar tanah tersebut. Berdasarkan keterangan SD1, ianya adalah jelas bahawa persuruhjaya kehakiman gagal untuk mengambil kira niat perundangan Akta. Ketiadaan keterangan SD1 untuk menyokong kesnya, defendan tidak melepaskan beban untuk membuktikan pembelaannya. Persuruhjaya kehakiman juga gagal untuk mengamati keterangan dan saksi terhadap kebarangkalian kes dan oleh yang demikian telah membuat dapatan yang khilaf. Defendan gagal untuk menunjukkan bahawa dia merupakan pemilik berdaftar tanah tersebut (lihat perenggan 32–33 & 37–39).
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- (5) Hakim bicara gagal untuk menguna pakai s 114(g) Akta Keterangan 1950 terhadap responden. Responden tidak memanggil ibunya yang merupakan saksi penting dan material mengambil kira ianya merupakan pembelaan responden. Beban pembuktian adalah atas responden untuk membuktikan pembelaannya. Kegagalan untuk memanggil ibunya untuk memberikan keterangan membenarkan mahkamah untuk membuat satu anggapan bertentangan di bawah s 114(g) terhadap responden, yang mana sekiranya ibu responden dipanggil, keterangan tidak akan memihak kepada responden (lihat perenggan 40).]

Cases referred to

Chor Phaik Har v Farlim Properties Sdn Bhd [1994] 3 MLJ 345, FC (folld)
Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors [2005] 2 MLJ 1; [2004] 4 CLJ 309, FC (refd)
Gunala a/l Ramachandran v Maliga a/p Ramachandran Originating Summons No 25–12 of 1999, HC (refd)
Munusamy Vengadasalam v Public Prosecutor [1987] CLJ Rep 221, SC (refd)
Pepper (Inspector of Taxes) v Hart [1992] 3 WLR 1032, HL (refd)
Tan Ying Hong v Tan Sian San & Ors [2010] 2 MLJ 1, FC (refd)

Legislation referred to

Evidence Act 1950 ss 106, 114(g)
 Land (Group Settlement Areas) Act 1960 ss 14, 15, 16
 National Land Code ss 322(1), 340
 Small Estates Distribution Act 1955 s 29

Manian Raju (Elizabeth Low with him) (Manian Raju & Assoc) in Civil Appeal No N-02(NCVC)(W)-2190–10 of 2018 for the appellant.
Sharif bin Mohamed (Nurliyana bt Azis with him) (Sharif & Khoo) in Civil Appeal No N-02(NCVC)(W)-625–04 of 2019 for the appellant.
R Shankar (Ramachandran Shankar & Co) in Civil Appeal No N-02(NCVC)(W)-2190–10 of 2018 for the respondent.
Faridah Begum bt Abdul Rahman (Lukneswari a/p Vengadesh with her) (Luknes, Faridah & Assoc) in Civil Appeal No N-02(NCVC)(W)-625–04 of 2019 for the respondent.

Lau Bee Lan JCA:

[1] There are two appeals before us, N-02(NCvC)(W)-2190–10 of 2018 ('Appeal 2190') and N-02 (NCvC)(W)-625–04 of 2019 ('Appeal 625'). Both Appeals were heard together basically because the respective lands in issue in both Appeals were lands which fall within the Land (Group Settlement Areas) Act 1960 ('Act 530') and the common issue in both Appeals concerned the application of s 16 of Act 530 to the lands in question. We allowed both the appeals on 22 Appeals 2020. Aggrieved with the decision, the respondent in

A Appeal 2190 has sought leave of the Federal Court to appeal against our decision. These are our reasons in respect of Appeal 2190.

[2] We shall for purposes of this appeal refer to the parties as they were referred to in the High Court.

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SALIENT BACKGROUND FACTS

C [3] PV Govindan was the original settlor ('peneroka') of the lands at Felda Peringkat 3, Sendayan, Negeri Sembilan Darul Khusus held under PM 1503, Lot 6469 Mukim Labu and PM 1504, Lot 6768 Mukim Labu. Both these lands fall within Act 530 and will be collectively referred to as the 'GSA land'.

D [4] PV Govindan's wife is Sarvanai a/p Paralankodan. They had the following eight children: (a) Rajendra Prasad (now deceased); (b) Rabindranath (deceased); (c) Kannan Deban (defendant); (d) Jothiram; (e) Ambikamurali (plaintiff); (f) Kumari; (g) Jayasree; and (h) Gomathi.

E [5] PV Govindan died intestate on 7 July 1987.

F [6] In 1996 there was a meeting before the Land Administrator attended by the deceased's children (except Jothiram) and their mother (the deceased's wife) with respect to the distribution of the deceased's estate comprising the GSA land. It is the plaintiff's case that the GSA land was registered in the name of the defendant as a holder, holding the said land in trust for the benefit of himself, his mother and his siblings as beneficiaries of the estate of the deceased and he is precluded from claiming that the GSA land belongs only to him to the exclusion of all other beneficiaries. The defendant disputed this, contending that the GSA land was registered in his name as the proprietor and that the whole share in the said land had been given to him by his mother and consented to by his siblings. Hence he has an indefeasible title.

HIGH COURT'S DECISION

H [7] The learned JC held that the primary issue was 'isu No 1 (iaitu) sama ada defendan memegang tanah-tanah tersebut sebagai pemegang amanah untuk dirinya, ibu serta adik beradiknya (benefisiari-benefisiari yang lain)' (para 14 of grounds).

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[8] The learned JC held 'Atas isu No 1 mahkamah ini mendapati defendan tidak memegang tanah-tanah tersebut sebagai pemegang amanah untuk dirinya sendiri, ibu serta adik beradiknya (termasuk plaintiff)' (para 24 of grounds).

THE PLAINTIFF'S SUBMISSION

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[9] In summary the plaintiff submitted that the learned JC erred in his findings on the following grounds:

- (a) when he failed to take into consideration the uniqueness of Act 530 and decided that the plaintiff being the registered proprietor ('pemilik berdaftar') was not a trustee for himself and other beneficiaries citing ss 14, 15 and 16; B
- (b) when he failed to consider the Hansard to The Group Settlement Areas Bill 1960 and The Group Settlement Areas (Amendment) Bill 2002 in interpreting ss 14, 15 and 16; C
- (c) when he ruled that the case of *Gunala a/l Ramachandran v Maliga a/p Ramachandran* Originating Summons No 25–12 of 1999 Seremban High Court is not applicable; D
- (d) when there was no proper judicial appreciation of the evidence of SD1 and the plaintiff's witnesses; and
- (e) when he failed to invoke s 114(g) against the defendant for failing to call a material witness. E

THE DEFENDANT'S SUBMISSION

[10] In summary the defendant submitted that the appeal should be dismissed for the following reasons:

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- (a) s 16 of Act 530 is not applicable because:
 - (i) the GSA land has been registered in the name of the defendant as registered proprietor; G
 - (ii) the beneficiaries had consented to relinquish their interest in the GSA land to the defendant;
 - (iii) the defendant is the registered proprietor of the GSA land pursuant to s 340 of the National Land Code ('the NLC'); and H
 - (iv) *Gunala's* case can be distinguished.
- (b) the learned JC has made findings of fact that there is no evidence that the defendant has been appointed as trustee in respect of the GSA land for the benefit of the other beneficiaries and the GSA land was handed over to the defendant unconditionally by the other beneficiaries. I

A OUR DECISION*Land held under the GSA*

B [11] In respect of the application of s 16 of Act 530 vis a vis the GSA land, the learned JC held:

C (a) ‘Seksyen 16 Akta tersebut antara lain memperuntukkan ... the persons entitled to interest in the holding may assign their interest to a single holder ... Peruntukan ini membenarkan tanah-tanah tersebut di assign (pindah milik) hanya kepada seorang individu sahaja’ (para 15 of grounds); and

D (b) ‘Seksyen 16 Akta tersebut tidak menghalang tanah diserahkan kepada seseorang (turun milik). Semua waris termasuk plaintif, SP2, SP3, SP4 bersetuju tanah-tanah tersebut diserahkan kepada defendan. SD1 sahkan tidak ada apa-apa syarat berkenaan dengan pemberian tanah-tanah tersebut kepada defendan oleh semua waris termasuk plaintif, SP2, SP3, SP4. SD1 sahkan berdasarkan semua persetujuan semua waris termasuk plaintif, SP2, SP3, SP4 turun milik sebagai pemilik’ (para 22 of grounds).

E [12] Learned counsel for the plaintiff submitted that the learned JC erred when he failed to take into consideration the uniqueness of Act 530 and decided that the plaintiff being the registered proprietor (‘pemilik berdaftar’)

F was not a trustee for himself and other beneficiaries, citing ss 14, 15 and 16 of Act 530.

[13] On the other hand, learned counsel for the defendant submitted that s 16 of Act 530 is not applicable, among others, because:

G (a) ‘tanah-tanah tersebut (the GSA land) sudah pun diletakmilik atas nama simati selepas satu pecah sempadan telah dilakukan ke atas tanah-tanah tersebut dan dengan demikian, geran tanah individu telah pun dikeluarkan oleh Pejabat Tanah Daerah Seremban’; and

H (b) ‘Responden adalah pemilik tanah-tanah tersebut dan dibawah Seksyen 340 Kanun Tanah Negara 1965, iaitu selepas persetujuan kesemua waris-waris simati dihadapan Pegawai Pentadbir Tanah Daerah Seremban, Negeri Sembilan Darul Khusus apabila satu Perintah Pembahagian dibawah Ordinan (Pembahagian) Harta Pesaka Kecil, 1955 telah diberi pada 14/3/1996. [P]erayu gagal membuktikan bahawa instrument pindahmilik tersebut telah dibuat secara frod ataupun salah nyata di bawah Sekyen 340(2) Kanun Tanah Negara, 1965 ... SD1 berpuas hati dengan persetujuan waris-waris tersebut dan setelah memenuhi kehendak-kehendak ataupun peruntukkan

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undang-undang, maka satu turun-milik tanah-tanah tersebut telah dibuat keatas nama Responden sebagai Pemilik Berdaftar kesemua bahagian tanah tersebut'. The case of *Tan Ying Hong v Tan Sian San & Ors* [2010] 2 MLJ 1 at pp 10, paras [18]–[19] was cited.

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[14] Given the divergent positions held by the plaintiff and the defendant with respect to the GSA land, we are of the considered view that this entails an examination of the applicable law which governs the parties with respect to the distribution of the GSA land at the meeting on 14 March 1996 before the Collector of Land Revenue. It is not disputed that the GSA land is a rural holding. Therefore Part III of The Group Settlement Areas Bill 1960 which is on 'Rural Holdings' is relevant, namely, the following provisions:

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14. A rural holding may be alienated only to one individual person ... and no joint ownership of a rural holding shall at any time be permitted.

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15. (1) No land comprised in a rural holding may at any time be subdivided.

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(2) No land comprised in a rural holding may be held by way of undivided shares.

(3) No rural holding may be released or sublet in whole or in part.

16. Where, *but for the provisions of section 15 the land comprised in any rural holding would on the death of the holder or otherwise be liable to transmission by way of subdivision or in undivided shares*, the persons entitled to interests in the holding may assign their interests to a single holder, and, in default of such assignment, the holding shall be disposed of on the order of the Collector and the proceeds of sale of the holding or any interest therein shall be dealt with according to law. (Emphasis added.)

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[15] In *Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 3 MLJ 345, the legal issue was whether a person claiming an interest in only part of the land could protect that interest by entering a caveat over the whole land. This turns on the true meaning and ambit of the proviso to s 322(1) of the NLC which states: 'Provided that such a caveat shall not be capable of being entered in respect of part of the land'.

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[16] In answering the said issue, at p 360 of the Report, Edgar Joseph Jr FCJ (as he then was) (delivering the judgment of the Federal Court) after having adopted the passage in the judgment of Lord Browne-Wilkinson in *Pepper (Inspector of Taxes) v Hart* [1992] 3 WLR 1032 at p 1056 A-C (at p 359 of the Report) opined:

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Nevertheless, we have arrived at the conclusion that we should follow the recent trend of the cases decided in the United Kingdom, Australia, New Zealand and Singapore and permit a relaxation of the exclusionary rule *by allowing a reference to Hansard as an aid to statutory interpretation where the enactment is ambiguous or obscure, or which if literally construed might lead to an absurdity and provided always*

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- A *that the statement reported in Hansard was made by a Minister or other promoter of a Bill.* We hasten to add, however, that when resort to Hansard is permissible, that by itself although meriting serious consideration cannot be determinative of the issue since it is only available as an aid to interpretation. To hold to otherwise, would amount to substituting the words of the Minister or other promoter of the Bill for the words of the statute, and that cannot be the law. (Emphasis added.)
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In this case, the Federal Court concluded that the Ministerial statement reported in the Hansard did not assist the court at all.

- C [17] Applying the principle of statutory interpretation in *Chor Phaik Har* to the appeal before us, we will now refer to the Hansard to aid us in the interpretation of The Group Settlement Areas Bill 1960 which was moved during the Second Reading of Parliament on 27 April 1960 by the late Tun Abdul Razak (as Deputy Prime Minister). He stated, among others, as follows:
- D (a) ‘... the purpose of this Bill is to enable the Government to solve the physical land problem that we have now and also to alleviate poverty in the rural areas ... [I]n order to overcome the serious land problem, the Government has adopted a new policy ... to ensure that in future smallholdings when alienated shall be of an adequate size and thereafter be maintained at that size and not allowed to become fragmented into non-viable units, and also that existing smallholdings which are too small to support a family should, where possible, be brought to economic size ... the basic economic unit sufficient to support a family is in the order of eight acres per family ...’ (p 758);
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- F (b) ‘Now, Sir, I would like to explain in greater detail Section 16 of the Bill. *Section 16 prohibits, upon the death of a holder, the distribution of a holding among a number of beneficiaries. It will be necessary for the beneficiaries to agree that the interests in the land should be assigned to a single holder, and, in default of such assignment, the Collector has the right to close the holding and dispose of the proceeds.* I have been advised that this provision will not infringe the principles of the Islamic Law, as the land before alienation is subject to this condition already and, therefore, the settlers when they take up the land must accept the land together with the condition already attached to the land’ (p 760); (Emphasis added.)
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- H (c) the word ‘or proprietor’ in cl 16 of the Bill has been deleted as follows:
- I Sir, I would like to move a slight amendment to this Clause as in amendment slip. It is that the words ‘or proprietor’ in line 3 be deleted. This is now made unnecessary in view of the definition of ‘holder’ in Clause 2 (2) (p 806).

[18] From a reading of the Hansard, it is clear that the legislative intent of ‘ss 14, 15 and 16 is there shall be one single *proprietor* for a holding and *the provisions prohibit the sub-letting, the subdivision or fragmentation of the holding*

in any circumstances' (p 759). We are of the view that the word 'proprietor' (as italicised) has to be taken to mean 'holder' in light of the amendment to cl 16. (Emphasis added)

A

[19] It is significant that s 16 *prohibits upon the death of a holder, the distribution of a holding among the beneficiaries: it is incumbent on the beneficiaries to agree that their interests in the land be assigned to a single holder, failing which the Collector of Land Revenue* (now called Land Administrator) *'has the right to close the holding and dispose the proceed'* (p 760 of the Hansard). (Emphasis added.)

B

C

[20] What can be gleaned from the Hansard is that the policy of the Government is essentially to prevent fragmentation of maintain the smallholdings at eight acres per family. Settlement Areas (Amendment) Bill 2002 was moved land and to The Group during the Second and Third Readings of Parliament by *Setiausaha Parlimen Kementerian Tanah dan Pembangunan Koperasi, Dr Robia bt Dato' Kosai*. Under the said Amendment Bill, the aforementioned legislative intent was repeated *save for the repeal of s 16 wherein the distribution of the estate of a deceased holder is now administered directly in accordance with the relevant legislation governing distribution of estate*, namely:

D

E

Sekiranya si mati seorang Islam waris-waris ialah sebagaimana ditetapkan dalam faraid seperti bapa, ibu, isteri, suami, anak lelaki, anak perempuan, cucu lelaki, cucu perempuan dan sebagainya

F

And:

Bagi si mati bukan seorang Islam, waris adalah sebagaimana dinyatakan dalam Akta Pembahagian 1958, iaitu Distribution Act 1958, iaitu seperti ibu, bapa, suami, isteri, anak-anak dan zuriat atau keturunan yang ke bawah.

G

[21] In light of the above, whilst the learned judge was correct in holding that under s 16 of Act 530, 'the persons entitled to interest in the holding may assign their interest to a single holder' and 'Seksyen 16 Akta tersebut tidak menghalang tanah diserahkan kepada seseorang (turun milik)', however we find His Lordship erred when he 'mendapati defendan tidak memegang tanah-tanah tersebut sebagai pemegang amanah untuk dirinya sendiri, ibu serta adik beradiknya (termasuk plaintiff)'.

H

[22] Given the framework of the statute as described in paras 18, 19 and 20 above, it is our considered opinion that the interpretation accorded by the defendant is untenable. In our judgment, notwithstanding that the title has been issued to the defendant as submitted by the defendant in para 13(i) above, it does not mean that the defendant is a registered proprietor of the GSA land

I

A under s 340 of the NLC. The reason being the GSA land is still within the ambit of the Ordinance because ‘land in the group settlement area remains within a ‘designated area’ (p 808 of the Hansard). The case of *Tan Ying Hong* is therefore of no assistance to the defendant’s case. We are of the considered view that the fact of the registration of the GSA land in the defendant’s name is only to fulfil the requirement of the law and the GSA land is being held in trust for his mother and siblings which will become apparent when we address the issue of lack of judicial appreciation of material evidence.

B
C *Failure to consider the case of Gunala a/l Ramachandran v Maliga a/p Ramachandran*

D [23] Learned counsel for the defendant submitted *Gunala’s* case ‘adalah berbeza dengan kes disini kerana [f]akta kes adalah berkenaan kesahihan ‘Surat Persetujuan’ yang dikatakan telah dibuat oleh lima benefisiari yang lain yang tidak hadir pada masa perbicaraan kes tersebut dan salah satu Surat Persetujuan tersebut telah ditandatangani oleh seorang benefisiari yang ‘mengalami penyakit terencat akal dan ‘psychosis’. The trial judge in *Gunala’s* case ‘telah memutuskan bahawa kesemua benefisiari-benefisiari/pemohon-pemohon harta pesaka tersebut telah menandatangani surat-surat persetujuan tersebut tanpa mengetahui sebenarnya sebab dan akibat dokumen-dokumen tersebut ditandatangani. Didalam kes ini, kesemua benefisiari mempunyai pengetahuan khusus berkenaan Surat Persetujuan yang ditandatangani oleh mereka dan mereka juga turut hadir pada masa perbicaraan Permohonan tersebut’.

F [24] The learned JC essentially agreed with the submission of counsel for the defendant as reflected at para 20 of the grounds as follows:

G Fakta kes [Gunala] [b]oleh dibezakan. Terdapat juga isu kesahihan surat persetujuan dalam kes tersebut. Dalam kes di hadapan saya tidak timbul isu kesahihan surat persetujuan. Lapan waris termasuk ibu mereka, plaintif, defendan, SP2, SP4 hadir semasa perbicaraan di hadapan SD1. Jothiram a/l PV Govindan (SP3) ada membuat surat persetujuan. Semua waris termasuk plaintif, SP2, SP3 dan SP4 bersetuju menyerahkan tanah-tanah tersebut kepada defendan. Ini disahkan oleh SD1.

H
I [25] In *Gunala’s* case, the case concerns the distribution of property under s 29 of the Small Estates Distribution Act 1955 (Act 98) left by a deceased to the beneficiaries of the estate. The applicant counsel submitted on ss 14, 15 and 16 of Act 530 and the position taken at the High Court is the same as has been argued by the plaintiff counsel before us in this appeal.

[26] The High Court set aside the order of the Land Administrator which reads as follows:

Perintah

A

Berdasarkan kenyataan pemohon dan surat-surat persetujuan yang difailkan, saya Shabuddin Yaacob PPTD Seremban, memerintahkan harta pusaka simati, Marayee a/p Kesaven @ Mariayee a/p Kesawen iaitu:

1. LM 222 Lot 3824 Mukim Labu (semua bahagian)

B

2. LM 223 Lot 4706 Mukim Labu (semua bahagian)

kepada Maliga a/p Remachandran (KP530630-05-5240) — semua bahagian

t.t.

12.7.1995

C

[27] Learned plaintiff counsel drew to our attention the order dated 1 March 2011 of the Court of Appeal which affirmed the decision of the High Court in setting aside the order of the Land Administrator. There are no grounds of judgment of the Court of Appeal decision. Be it as it may we are of the view that the learned judge in *Gunala's* case was correct in His Lordship's analysis of the issue to be determined as follows:

D

Untuk memutuskan permohonan ini mahkamah ini mengambil perhatian khusus terhadap peruntukan undang-undang yang berkaitan membenarkan hartanah berkenaan dipindahmilik hanya kepada seorang individu sahaja. Persoalan yang timbul dari senario ini ialah sama ada penerima pindahmilik hartanah berkenaan mempunyai hak ke atas hartanah berkenaan secara peribadi dan mutlak atau dia mengang hartanah berkenaan untuk dirinya dan juga sebagai pemegang amanah bagi benefisiari-benefisiari yang lain.

E

F

[28] The issue confronting the High Court in *Gunala's* case was similar to the issue before the High Court in the appeal before us. With respect we could not agree with the decision of the learned JC which is supportive of the defendant's submission. In *Gunala's* case the learned High Court judge reversed the order of the Land Administrator because: (i) he found that the authenticity of the 'surat persetujuan' purportedly signed by the second applicant was vitiated by the unchallenged evidence that the second applicant who suffered mental disability and was unable to manage himself and this fact was not made known to the Land Administrator in determining the admissibility of the said 'surat persetujuan'; and (ii) the 'surat persetujuan' signed by the rest of the beneficiaries was vitiated based on the evidence of the first applicant which revealed that the rest of the beneficiaries signed the 'surat persetujuan' without understanding the purport of signing the same.

G

H

I

Lack of judicial appreciation of evidence

[29] With respect to the meeting before the collector of Land Revenue (now called Land Administrator) on 14 March 1996, the learned JC held as follows:

- A** (a) ‘Semasa perbicaraan tersebut ibu mereka memohon untuk dibahagikan pusaka simati kepada defendan semua bahagian atas tanah-tanah tersebut (ms 10 Ikatan Dokumen Bersama ditanda B). Dan waris yang hadir mengakui semua kenyataan ibu mereka adalah benar belaka dan bersetuju supaya diserahkan semua harta pusaka simati kepada defendan atas tanah-tanah tersebut semua bahagian (ms 11 Ikatan Dokumen Bersama ditanda B). Jothiram a/l PV Govindan (SP3) ada membuat surat persetujuan penyelesaian bahagian tanah-tanah tersebut kepada defendan semua bahagian (ms 11 Ikatan Dokumen Bersama ditanda B). Jelasnya plaintif, SP2, SP3, SP4 dan adik-beradik yang lain bersetuju supaya diserahkan semua harta pusaka simati kepada defendan atas tanah-tanah tersebut semua bahagian’ (para 19 of grounds);
- B**
- C**
- D** (b) ‘Nota perbicaraan di hadapan SD1 (ms 9–11 Ikatan Dokumen Bersama ditanda B) langsung tidak dicabar oleh peguamcara plaintif, langsung tidak dirujuk dalam pemeriksaan balas. Nota perbicaraan tersebut langsung tidak disangkal oleh peguamcara plaintif. Faktanya adalah jelas bahawa semua waris termasuk plaintif, SP2, SP3, SP4 bersetuju supaya diserahkan tanah-tanah tersebut kepada defendan semua bahagian’ (para 21 of grounds);
- E** (c) ‘... SD1 sahkan tidak ada apa-apa syarat berkenaan dengan pemberian tanah-tanah tersebut kepada defendan oleh semua waris termasuk plaintif, SP2, SP3, SP4. SD1 sahkan berdasarkan semua persetujuan semua waris termasuk plaintif, SP2, SP3, SP4 turun milik sebagai pemilik’ (para 22 of grounds); and
- F**
- G** (d) ‘Tiada keterangan bahawa semua waris termasuk plaintif, SP2, SP3, SP4 melantik defendan sebagai pentadbir dan atau sebagai pemegang amanah kepada mereka. Nota perbicaraan di hadapan SD1 dan keterangan SD1 tidak menunjukkan sedemikian. Sebaliknya, nota perbicaraan dihadapan SD1 dan keterangan SD1 menunjukkan dengan jelasnya bahawa semua waris termasuk plaintif, SP2, SP3, SP4 bersetuju tanah-tanah tersebut diserahkan kepada defendan (sebagai pemilik berdaftar)’ (para 23 of grounds)
- H** [30] Learned counsel for the defendant submitted that the decision of the learned JC ought not to be disturbed and his submission is a mirror of the learned JC’s decision.
- I** [31] Learned counsel for the plaintiff argued that the GSA land was held by the defendant on trust for the rest of his siblings relying on the absence of a ‘Surat Persetujuan’ by Jothiram and the lack of appreciation of the evidence of SP1, SP2, SP3 and SP4 that the defendant held the GSA land as ‘guardian’.

Evidence of SD1

[32] It is pertinent for us to reproduce in verbatim and in extenso the following evidence given by SD1, Encik Shabuddin Yaacob, who was the Ketua Penolong Pengarah, Unit Pembahagian Pesaka Negeri Sembilan Barat Seremban at the material time during cross-examination by the learned counsel for the plaintiff:

A

S: Benar atau tidak bahawa, bila peneroka asalnya meninggal dunia walaupun keluarganya ada ramai orang adik-beradik dan sebagainya, isteri dan sebagainya tanah itu hanya boleh didaftarkan ikut undang-undang atas seorang nama sahaja.

B

J: Betul. Mengikut GSA.

S: Betul. Dan dalam kes ini, PV Govindan itu, mendiang bila dia meninggal dunia pada tahun '87 dia tidak ada apa-apa wasiat. Betul?

C

J: Betul.

S: Maka walaupun isteri dan anaknya, kelapan-lapan orang semuanya merupakan waris harta pusaka si mati memandangkan peruntukan istimewa Land Group Settlement Areas ini nama selepas PV Govindan itu hanya boleh diletak, tanah itu hanya boleh diletak atas nama seorang sahaja maka keluarga itu kena memilih seorang. Betul atau tidak?

D

J: Betul.

S: Walaupun hartanah ini didaftarkan atas nama seorang, tanah itu diterokai oleh keluarganya iaitu keluarga PV Govindan meninggal isterinya dengan anak-anak keluarga mereka duduk atas tanah tersebut. Betul?

E

J: Betul.

S: Tak pasti. Tapi dalam pembahagian, untuk mendaftar perintah pembahagian selepas kematian peneroka asalnya kesemua bagi kesemua kes di bawah Land Group Settlement Areas Act tak terkira keluarga India ke, keluarga Melayu ke, keluarga Gina kena didaftarkan atas nama seorang sahaja walaupun ada ramai orang dalam, yang mengharap hartanah tersebut. Menerokai hartanah tersebut. Betul?

F

J: Betul. Yang Arif.

S: Dan kalau mereka nak letakkan atas dua tiga orang kamu telah menerangkan kepada mereka tak boleh ikut undang-undang. Betul atau tidak?

G

J: Yang Arif, sekiranya mereka hendak meletak lebih daripada satu nama mengikut Akta Tanah Berkelompok tidak dibenarkan hanya boleh ...

S: Bukan, jawab soalan saya, boleh atau tidak mengikut undang-undang.

H

J: Tak boleh.

S: Soalan yang terakhir ya. Sebagai kakitangan kerajaan, anda memegang sesuatu jawatan yang amat penting. Pentadbir Tanah Daerah Seremban kamu telah pun melaksanakan urusan ini sehubungan apa yang dikatakan tanah-tanah yang berkelompok Group Settlement Areas Act di LBJ Johnson dan juga di Felda Sendayan. Di mana hartanah-hartanah ini merupakan penerokaan oleh keluarga. Keluarga-keluarga, tak kisah keluarga Melayu ke, keluarga India ke, keluarga Gina ini digalakkan oleh kerajaan untuk menerokai tanah-tanah tersebut. Kesemuanya didaftarkan atas seorang nama sahaja, ikut undang-undang akta berkelompok. Betul atau tidak?

I

A J: Betul.

[33] Based on the evidence of SD1, it is clear that the learned JC had failed to consider the legislative intent of the GSA which we alluded to earlier which has been confirmed by the evidence given by SD1 under cross-examination.
B The finding of the learned JC that the evidence of SD1 was not challenged by the plaintiff counsel is misplaced.

[34] Based on the evidence, we find there is no dispute that the siblings signed the 'surat persetujuan'; however, it is clear that the siblings signed based on their understanding as explained to them by SD1 as follows:
C

(a) SP4 (Jayasree):

9. S: Apa telah berlaku di pejabat tanah?

D J: *Pegawai di pejabat tanah beritahu kami bahawa Abang Kannan adalah guardian manakala emak saya dan kami adik-beradik adalah waris. Pegawai di pejabat tanah juga beritahu kami bahawa hanya satu orang boleh didaftarkan sebagai pemilik berdaftar Felda Sendayan kerana ikut undang-undang. Selepas itu, pegawai di pejabat tanah suruh emak saya dan kami adik-beradik tandatangan dokumen-dokumen.*

E S: Adakah kamu tandatangan apa-apa dokumen untuk melepaskan tanah-tanah tersebut kepada Kannan?

J: *Tidak ada. Kami hanya tandatangan dokumen-dokumen untuk abang Kannan jadi guardian kami.* (Emphasis added.)

F (b) the combined evidence of SP1 (plaintiff), SP2 (Gomathi) and SP4 (Jayasree) is that the defendant is the registered holder of the GSA land on the understanding that he is the 'guardian' and holding the GSA land on trust for them and their mother.

G [35] It is our considered view that just like in *Gunala's* case where the 'surat persetujuan' from the beneficiaries were vitiated due to lack of consent, likewise in the appeal before us, there is no unequivocal consent that the GSA land was given wholly by the defendant's mother to the defendant and consented to by his siblings, including the plaintiff herein. We therefore find that the learned JC has erred in distinguishing *Gunala's* case.
H

[36] In any event the 'surat persetujuan' relied on by SD2 as proof that Jothiram consented to his interest in the GSA land to be assigned to the defendant was not produced and marked as exhibit. Therefore we find just like in *Gunala's* case, his consent, if any, is vitiated by the lack of proof as he was not present at the meeting on 14 March 1996.
I

[37] SD2 (defendant) relied on SD1's evidence to prove that his mother and

his siblings had relinquished their rights and interests in the GSA lands to him and that he was the registered proprietor of the GSA lands. Premised on the evidence referred in para 32 above, the following can be gleaned from the proceedings conducted by SD1:

- (a) upon the death of the original settlor, notwithstanding that the deceased leaves behind a large family comprising his wife and their children, the deceased's land held under Act 530 can only be registered with a single holder in accordance with s 16 of Act 530 which prohibits upon the death of a holder, the distribution of a holding among a number of beneficiaries;
- (b) in the context of the appeal before us, whilst the deceased's wife and his 8 children are beneficiaries to the estate of the deceased who died intestate, it is necessary for the beneficiaries to agree that the interests in the GSA land would be assigned to a single holder in accordance with s 16 of Act 530 in default of such assignment, the Collector has the right to close the holding and dispose of the proceeds; and
- (c) there was no unequivocal evidence that the defendant's mother and his siblings had given the GSA land wholly to him as registered proprietor under s 340 NLC, granting him indefeasible title to the GSA land; rather the defendant is the registered holder of the GSA land holding the said land on trust for his mother and his siblings, including the plaintiff herein.

[38] Bereft of SD1's evidence to support his case, SD2 has not discharged his burden of proving his defence. defendant counsel was unable to show to the court the document that proved that defendant was the registered proprietor of the GSA land and to a query from the Court, replied that the document was not in the records of appeal.

[39] In light of our discussion above, we are of the considered view that the learned JC has failed to judicially appreciate the evidence of the witnesses against the probabilities of the case and hence with respect, His Lordship erred in his findings in para 29 above (see *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1 at p 10; [2004] 4 CLJ 309 at p 320 b-h (FC)).

Invocation of s 114(g)

[40] Further we find the learned JC erred when His Lordship failed to invoke s 114(g) of the Evidence Act 1950 against the defendant for the reasons explained below. The defendant's case is that the GSA land was given by his mother, Sarvanai a/p Paralankodan because at the material time he had taken care of his mother and he had cultivated the GSA land together with his

- A deceased father and his mother. Yet the defendant refused to call his mother who is an important and material witness given that it is his defence. The evidential burden is upon the defendant to prove his defence (s 106 of the Evidence Act 1950). Failure of the defendant to call his mother to testify warrants this Court to draw an adverse inference under s 114(g) of the
- B Evidence Act 1950 against the defendant in that if she was called, her evidence would be unfavourable to the defendant. Reliance is placed on the oft- cited case of *Munusamy Vengadasalam v Public Prosecutor* [1987] CLJ Rep 221 where the Supreme Court opined that:
- C Adverse inference under that illustration [114(g)] can only be drawn if there is withholding or suppression of evidence and not merely on account of failure to obtain evidence. It may be drawn from withholding not just any document, but material document by a party in his possession, or for non-production of not just any witness but an important and material witness to the case.
- D [41] With respect the learned JC had erred when His Lordship held ‘Justeru atas imbalan kebarangkalian plaintiff telah gagal untuk membuktikan kesnya terhadap defendan’ (para 25 of grounds). Taking the totality of the evidence, in our judgment, had the learned JC evaluated the evidence of SD1, the evidence
- E of SP1, SP2, SP3 and SP4, had he not failed to call his mother as a witness and taking into consideration the Hansard as an aid to the interpretation of particularly, s 16 of Act 530, on a balance of probabilities the plaintiff would have proved her case against the defendant.
- F CONCLUSION
- G [42] For the reasons which we have adumbrated above, it is our finding that there are merits in the appeal which warranted our appellate intervention. We unanimously allowed the appeal in terms of prayer 16 (a) and (b) of the statement of claim as follows:
- (a) Suatu pengisytiharan bahawa Defendan telah dan sedang pada semua masa yang material memegang tanah-tanah tersebut sebagai pemegang amanah untuk diri sendiri dan ibu dan adik beradiknya seperti berikut:
- H (i) Rajendra Prasad;
- (ii) Rabindranath (mendiang);
- (iii) Jothiram;
- I (iv) Ambikamurali (Plaintif);
- (v) Kumari;
- (vi) Jayasree;
- (vii) Gomathi.

- (b) Suatu perintah bahawa Defendan mengemukakan butir-butir akaun atau butir-butir wang atau pampasan yang telah diterima oleh Defendan sehubungan penjualan ataupun pengambilan balik sebahagian tanah-tanah tersebut dan perintah selanjutnya bahawa wang tersebut dibahagikan kepada Plaintiff dan benefisiari-benefisiari yang lain secara sama rata.'

A

B

[43] We also set aside the decision of the learned JC dated 4 October 2018 and awarded costs of RM25,000 here and below.

Appeal allowed with cost of RM25,000 and decision of High Court set aside.

C

Reported by Mohd Kamarul Anwar.

D

E

F

G

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I